VERA ROSSMAN

IBLA 77-451 Decided July 12, 1978

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying Mining Claim Occupancy Act application C-221.

Affirmed as modified.

1. Mining Occupancy Act: Principal Place of Residence

   A cabin which is used for only a short period of time each year, primarily during the summer months, does not constitute "a principal place of residence" within the meaning of sec. 2 of the Act of Oct. 23, 1962, and an application for the conveyance of land based upon such use is properly rejected.

2. Mining Occupancy Act: Generally

   Occupancy of a cabin which is not physically located within the boundaries of a relinquished mining claim cannot serve as a basis for the conveyance of land under the Act of Oct. 23, 1962.

APPEARANCES: Vera Rossman, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

On July 27, 1966, George P. Rossman filed with the Bureau of Land Management a petition under the Mining Claim Occupancy Act, 76 Stat. 1127, 30 U.S.C. § 701 et seq. (1970), seeking a determination as to the validity of the Sooner placer mining claim, on which he alleged that two cabins were then situated. The claim was located within the Pike and San Isabel National Forest, and accordingly, the Colorado State Office, BLM, referred the petition to the Regional Forester, for the preparation of a mineral report.

The mineral report, dated February 16, 1967, found no evidence that a discovery of a valuable mineral deposit had been made, and thus concluded that the mining claim was invalid. On May 10, George Rossman filed a relinquishment of his claim to the United States and made application under the Mining Claim Occupancy Act, supra, for fee title to 5 acres of land embracing his improvements. Pursuant to a memorandum of understanding between the Bureau of Land Management and the Forest Service, the matter was referred once again to the Regional Forester for a determination whether the applicant was qualified under the Mining Claim Occupancy Act, and, if so, "an appraisal of the interest or title which you consider appropriate for transfer of the tract."

Sometime in the fall of 1967, one L. W. Drake, a neighbor of the applicant, proposed a land exchange with the Forest Service embracing the Sooner placer claim. Drake agreed to sell the applicant the area requested in his application if the transfer was consummated. This arrangement was apparently satisfactory to the applicant and action under his Mining Claim Occupancy application was suspended pending completion of the exchange. George Rossman died in either late 1968 or early 1969, and his wife, Vera Rossman, appellant herein, succeeded to his interests.

Further consideration of this matter was held in abeyance until July 1974, when Drake withdrew his exchange application. In August 1974, the Chief, Division of Technical Services, Colorado State Office, Bureau of Land Management, wrote to the Regional Forester requesting an immediate report on the applicant's qualifications or notification to the applicant that Forest Service consent would not be given.

The first report, filed on January 13, 1975, concluded that the applicant was qualified, and BLM concurred with this finding on June 18, 1975. By letter of that date to the Acting Deputy Regional Forester, the Colorado State Office requested that the Forest Service determine whether or not they would consent to a conveyance of land (see 30 U.S.C. § 703 (1970)) and, if so, under what conditions.

On August 5, 1976, BLM was informed that the Forest Service had discovered that the land sought was also embraced by a prior mining claim known as the Brownlow Lode M.S. 13433. Forest Service had informed appellant of this problem and suggested that she either acquire the Brownlow claim and relinquish it to the United States or accept a special use permit.

On August 17, 1976, BLM informed the Forest Service of its agreement with their position, noting that there was the additional option of having the Government contest the Brownlow claim.

On December 29, 1976, the Forest Service filed with BLM an amended qualifications report which found that the applicant was not qualified for two reasons. The first was the existence of the Brownlow claim. The second ground was the discovery that the cabin claimed as the principal place of residence had been moved from privately owned lands to National Forest lands subsequent to the date of application.

On June 23, 1977, the Colorado State Office, BLM, concurred in the finding that appellant was not a qualified owner-occupant on two separate grounds: 1) the existence of the Brownlow claim; and 2) that appellant was not qualified because of a lack of year-round occupancy. The June 23 decision did not mention the Forest Service finding that the cabin had been moved in 1974 from private lands to those within the Forest Service system. Appellant timely filed a notice of appeal from the BLM determination.

While the existence of the Brownlow claim on the records would prevent issuance of title to the appellant, we are not convinced that its mere existence, in and of itself, must necessitate rejection of the Mining Claim Occupancy Act application. There are various avenues by which that claim's validity could be determined and which were noted in the correspondence in the case file. Were this the only problem in the case we would be disposed to vacate the decision below and remand the files for further action. Other considerations, however, compel us to affirm the decision of the State Office.

[1] On appeal, appellant states:

> It is well known that a cabin situated 10,400 ft. elevation cannot be occupied year round. Only a few weeks in summer can people live there. * * * Both cabins have been occupied by us and other members of our family, and by others who helped us with the work, - for considerable time, almost every summer.

This Department has consistently held that a house which is used only for a few weeks each year either for vacations and other leisure periods or for mining activities does not constitute "a principal place of residence" within the ambit of section 2 of the Act. See e.g., Robert L. Shipley, A-30877 (April 25, 1968); Coral V. Funderburg, A-30514 (June 14, 1966); Cora Pruett, A-30524 (April 28, 1966). The use alleged in the instant case similarly does not rise to the level of "a principal place of residence."

[2] Moreover, the maps submitted by the Forest Service indicate that until 1974 the slab-sided cabin, which was identified in the original application as the applicant's "place of residence each

year," was not, according to a 1971 survey conducted by the BLM, located within the exterior boundaries of the Sooner Placer claim, but was actually located on a patented mining claim known as the Union Placer. There is no question that appellant and her husband thought that the cabin was located within the Sooner Placer claim at the time of the application. The 1971 survey, however, discloses that this was a misapprehension on their part. While their mistake is understandable given the nature of the various patented claims which are in the area, the fact remains that the provisions of the Mining Claim Occupancy Act apply only to "a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence." 30 U.S.C. § 702 (1970). (Emphasis added.)

The slab-sided structure which was identified as appellant and her husband's principal place of residence not being within the confines of the Sooner Placer claim, there is no basis under the Mining Claim Occupancy Act by which the relinquishment of the Sooner Placer claim can be utilized for the acquisition of title to the land sought. The State Office decision rejecting the application is correct for this additional reason.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

I have no problem with the main opinion except to the extent that it suggests that a cabin used for only a short period of time each year, primarily during the summer months, cannot constitute a "principal place of residence" even though the record shows that the use periods were the only feasible ones in view of weather conditions.

The appeal recites in part as follows:

> It is well known that a cabin situated 10,000 ft. elevation cannot be occupied year round. Only for a few [w]eeks in summer can people live there. Since 1941 we have spent variable lengths of time there each summer, even into mid-September, & for short times in the Fall, when weather permitted. It has been declared a "principle [sic] place of residence", legally accepted as such, and has been our second home. Besides the slab cabin where we kept tools and equipment, used part time for sleeping space,- we also have the log cabin for residence. Both cabins have been occupied by us and other members of our family, and by others who helped us with the work,- for considerable time, almost every summer.

At the hearings on the bill which culminated in the Mining Claim Occupancy Act, 30 U.S.C. § 701 (1970), Congresswoman Gracie Pfost and Senator Church both made crystal clear that the bill was not intended as a vehicle for summer vacation homes. But Congressman "Bizz" Johnson, whose constituency includes the Mother Lode County of California, pointed out that for large portions of the year cabins in that area were simply uninhabitable.

While this issue is not decisive of the case, since other factors are preclusive of relief, nevertheless I believe that occupancy of a cabin for short periods of time during summers is not necessarily a bar to that cabin constituting "a principal place of residence," particularly where topography and weather bar occupancy at other periods. Cf. Herman C. and Edith O. Kampling, A-30592 (September 26, 1966). Where regular a residence is maintained concurrently elsewhere, however, the cabin used intermittently could not constitute a principal place of residence. Robert A. Johnson, 75 I.D. 361 (1968).

Frederick Fishman
Administrative Judge